

**FILED**

**MAY 22 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

SHANNON R. HOPSON,

Petitioner - Appellant,

v.

DIRECTOR OF CORRECTIONS; et al.,

Respondents - Appellees.

No. 04-57196

D.C. No. CV-03-01115-  
WQH/POR

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
William Q. Hayes, District Judge, Presiding

Submitted May 15, 2006<sup>\*\*</sup>

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

California state prisoner Shannon R. Hopson appeals pro se from the district court's denial of his motion for relief from the order denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. § 1291.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

In Hopson's Federal Rule of Civil Procedure 60(b) motion, he seeks to relitigate the claims in his § 2254 petition that the district court already considered and denied. Accordingly, his request is in substance a successive habeas petition. *See Gonzalez v. Crosby*, 125 S. Ct. 2641, 2647-48 (2005).

Hopson has not petitioned this court for permission to file a successive habeas petition in the district court as required under 28 U.S.C. § 2244(b)(3)(A). We therefore vacate the district court's denial of the motion for lack of subject matter jurisdiction and remand with instructions to the district court to dismiss the motion. *See Cooper v. Calderon*, 274 F.3d 1270, 1274-75 (9th Cir. 2001).

We also decline to provide such authorization here because Hopson does not allege that the claims rely on a new rule of constitutional law or rest on a newly discovered factual predicate. 28 U.S.C. § 2244(b)(2), (3)(C).

**VACATED and REMANDED with instructions to the district court to dismiss the motion.**